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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 976

ROYAL PACKING COMPANY, A CORPORATION,
PETITIONER

v.

PHILIP B. FLEMING, TEMPORARY CONTROLS
ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The District Court did not render an opinion, and its findings of fact and conclusions of law (R. 132–137) are not reported. The opinion of the Circuit Court of Appeals (R. 149–156) is reported at 157 F. 2d 524. The petition for rehearing was denied without opinion (R. 169).

JURISDICTION

The petition for rehearing was denied on November 21, 1946 (R. 169). The petition for a writ of certiorari was filed on February 3, 1947.

Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. 347 (a)).

QUESTIONS PRESENTED

1. In deciding whether the interpretations issued to petitioner authorized the prices charged, was the Circuit Court of Appeals bound to accept the trial court's determination of the meaning of the interpretation unless "clearly erroneous" under Rule 52 (a) of the Federal Rules of Civil Procedure; if so, was the trial court's determination "clearly erroneous?"

2. If the interpretations did not authorize the prices charged, would Section 205 (d) of the Emergency Price Control Act afford a complete defense to liability for damages under Section 205 (e) of the Act, where the trial court has made a finding of good faith?

STATUTES AND REGULATIONS INVOLVED

The action involves the Emergency Price Control Act, as amended (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App., Supp. V, 901 et seq.), Revised Maximum Price Regulation 169 (7 F. R. 10381) and Revised Procedural Regulation No. 1 (7 F. R. 8961). The pertinent provisions of each are set forth in the Appendix.

STATEMENT

Petitioner is a meat packer whose plant is located in St. Louis at some distance from a rail-

road loading platform. Sometime in 1943 it became a federally inspected plant and undertook interstate shipment of beef and veal (R. 107), adding twenty-five cents per cwt. to the zone price for the meat established in Revised Maximum Price Regulation 169 (R. 118). This charge was a transportation charge corresponding roughly to petitioner's cost of transporting the meat from its slaughter plant to the railroad siding for loading and subsequent interstate shipment (R. 123).

The Administrator brought this action for injunction and treble damages based on sales between January 1 and July 1, 1944, of beef and veal cuts at overceiling prices (R. 2–7). At the trial, respondent introduced petitioner's sales invoices, bills of lading and ledger sheets and computations based on those records (R. 27). The petitioner admitted the sales at the price shown on the invoices (R. 24), and introduced testimony showing instructions to its employees and other efforts to comply with the regulations (R. 99, 106). These included correspondence with the St. Louis office of the Office of Price Administration with regard to Revised Maximum Price Regulation 169 (Exhibits B, C, D and E, R. 110, 111, 115, 119). The alleged overcharges, except the sum of $187.35 to which petitioner confessed, were the result of the twenty-five cents per cwt. transportation charge, which the petitioner con-

tended was authorized by the regulation and the written interpretation which it had procured.

The applicable sections of the regulation provide an additional charge of twenty-five cents per cwt. in Zone 5 for transportation from the point at which the meat was slaughtered to a distribution point located in the same price zone as the slaughter plant. Section 1364.454 (a) (2); Section 1364.469 (a) (2). Petitioner claimed that "distribution point" was the railroad loading platform, and not the slaughter house itself, as respondent contended.

The district court held that the twenty-five cents per cwt. transportation charge was proper under the regulation and that petitioner had made it in good faith pursuant to the instructions of the State Price Attorney (Finding 10; R. 136). It also held that the confessed overcharges had been made in good faith and despite petitioner's diligent effort to comply (Findings 7, 8; R. 135). It, therefore, refused to issue an injunction and gave judgment to respondent only for the amount of the confessed overcharges.

On appeal, respondent urged the incorrectness of the interpretation of the regulation made by the trial court and the inapplicability of the written interpretations procured from the State Price Attorney to the facts at issue. The Circuit Court of Appeals for the Eighth Circuit held that it was not bound by the district court's determination of these issues, that respondent's

contention as to the meaning of the regulation was correct, and that therefore, the twenty-five cents per cwt. transportation charge constituted an overcharge. It determined that the written interpretations relied upon by petitioner did not justify it in making the charges complained of (R. 155), but awarded only single damages on the ground that there was sufficient evidence of petitioner's good faith to support the trial court's conclusion that the company was not liable for multiple damages.

ARGUMENT

1. The determination of the Circuit Court of Appeals that petitioner's conduct was not justified by the language of the interpretations procured from the Office of Price Administration and, therefore, was not pursuant thereto, involves solely a construction of a particular written document and the application of it to a set of unique, uncontradicted facts. No question of general importance is presented.

As to the merits of petitioner's contention that the court below went beyond the proper bounds of appellate review, it may be noted that Rule 52 (a) of the Federal Rules of Civil Procedure does not require that finality be given to the construction placed by a district court upon administrative regulations and interpretations, particularly where such construction is contrary to that urged by the administrative agency involved. That the

district court included such a construction within its "findings" changed the label but not the character of the determination. *Exmoor Country Club* v. *United States,* 119 F. 2d 961 (C. C. A. 7th); *United States* v. *Anderson,* 108 F. 2d 475 (C. C. A. 7th); *Duquesne Club* v. *Bell,* 127 F. 2d 363 (C. C. A. 3rd), certiorari denied, 317 U. S. 638.[1] That part of the district court's "findings" which was a factual determination, namely, that petitioner acted in "good faith," was respected by the Circuit Court of Appeals, and formed the basis of the limitation of the Administrator's judgment to single damages.

Moreover, the refusal to accept the district court's "finding" that the overcharges were pursuant to the interpretations procured by petitioner was correct even if Rule 52 (a) is applicable; the finding is clearly erroneous. The first communication (Exhibit C, R. 111) concerned

[1] See also, the decisions in which, in considering the effect of administrative interpretations, trial court holdings as to the meaning of a regulation were reversed without any intimation that the issue was not entirely open to the appellate court. *Bowles* v. *Seminole Rock & Sand Co.*, 325 U. S. 410; *Bowles* v. *Nu Way Laundry Co.*, 144 F. 2d 741 (C. C. A. 10th), certiorari denied, 323 U. S. 791; *Porter* v. *Crawford & Doherty Foundry Co.*, 154 F. 2d 431 (C. C. A. 9th), certiorari denied October 14, 1946, No. 161, October Term, 1946; *Porter* v. *Nowak*, 157 F. 2d 824 (C. C. A. 1st); *Southern Goods Corp.* v. *Bowles*, December 23, 1946 (C. C. A. 4th) not yet reported. In this connection, there is no significant difference between the construction of a regulation and of an administrative interpretation of the regulation.

the sale of hamburger meat and the necessity for separately invoicing any proper transportation charge. The second letter (Exhibit D, R. 115), written in response to petitioner's telephone inquiry, first discussed two questions completely distinct from the problem at issue, and in its paragraph numbered (3), instructed petitioner to use the St. Louis zone price "minus the required deductions, plus the permitted additions set forth in the Regulation." It did not elaborate the meaning of "permitted additions". The final interpretation (Exhibit E, R. 119) distinguished the methods of paying transportation charges in the case of less-than-carload and carload sales. Its only comment on local delivery charges was to note that they could be added to the zone price "when delivering from one zone to another." The deliveries from packing house to loading platform made by petitioner were within the same zone. Thus, petitioner's reliance on these documents as authorizing the additional twenty-five cents per cwt. transportation charge was completely unjustified, and the trial court's finding is without support.

2. Section 205 (d) of the Emergency Price Control Act, as amended, provides that no person shall be held liable to damages because of anything done or omitted to be done in good faith pursuant to any provision of the Act or any regulation thereunder. Section 205 (d) has been

uniformly recognized as affording complete protection against liability for damages under Section 205 (e) of the Act only when the good faith actions of a seller are pursuant to the Act or regulation thereunder, and not in violation of it. *Bowles* v. *Franceschini,* 145 F. 2d 510 (C. C. A. 1st); *Bowles* v. *Indianapolis Glove Co.,* 150 F. 2d 597 (C. C. A. 7th); certiorari denied, 326 U. S. 794; *Schreffler* v. *Bowles,* 153 F. 2d 1 (C. C. A. 10th) certiorari denied June 10, 1946, No. 1124, October Term, 1945; *Crary* v. *Porter,* 157 F. 2d 410 (C. C. A. 8th); *Porter* v. *Bledsoe,* decided January 8, 1947 (C. C. A. 4th) not yet reported. The Circuit Court of Appeals did not reject the accepted rule as to the application of Section 205 (d), but recognized it in its explicit determination that the transportation charges made by petitioner were not justified by the interpretations on which petitioner relied, and hence were not pursuant to the Act or regulation.

CONCLUSION

The decision of the court below was correct. There are no conflicts of decision, and no question of general importance is involved. The petition should be denied.

Respectfully submitted.

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FEBRUARY, 1947.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 765; 58 Stat. 632; 50 U. S. C. App., Supp. V, 901 et seq.):

Section 205 (d):

> No person shall be held liable for damages or penalties in any Federal, State, or Territorial court, on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this Act or any regulation, order, price schedule, requirement, or agreement thereunder, or under any price schedule of the Administrator of the Office of Price Administration or of the Administrator of the Office of Price Administration and Civilian Supply, notwithstanding that subsequently such provision, regulation, order, price schedule, requirement, or agreement may be modified, rescinded, or determined to be invalid. In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

Pertinent provisions of Revised Maximum Price Regulation 169, as amended (7 F. R. 10381, 8 F. R. 4097):

Section 1364.454 (a) (2):

> For transportation from the point at which the meat was slaughtered in Price Zone 1, 2, 5, 6, 7, 8, 9, or 10 to a distribution point located in the same price zone as the slaughter point, other than another slaughter, packing or processing plant owned or controlled by the same seller, the seller may add the actual cost of transportation computed at the lowest common carrier rate for the method of transportation used, but in no event more than 25 cents per cwt.

Section 1364.469 (a) (2):

> For transportation from the point at which the calf or calves were slaughtered in Price Zone 1, 2, 3, 5, 6, 7, 8, 9, or 10 to a distribution point located in the same price zone as the slaughter point, other than another slaughter, packing or processing plant owned or controlled by the same seller, the seller may add the actual cost of transportation computed at the lowest common carrier rate for the method of transportation used, but in no event more than 25 cents per cwt.

Pertinent provisions of Revised Procedural Regulation No. 1, as amended (7 F. R. 8961, 8 F. R. 3313):

Subpart E—*Interpretations:*

> § 1300.51 *Interpretations.*—An interpretation rendered by an officer or employee of the Office of Price Administration with respect to any provision of the Act or of any regulation, price schedule, order, requirement, or agreement thereunder, will be re-

garded by the Office of Price Administration as official only if such interpretation was requested and issued in accordance with § 1300.52 of this regulation. Action taken in reliance upon and in conformity with an official interpretation and prior to any revocation or modification thereof or to any superseding thereof by regulation, order or amendment, shall constitute action in good faith pursuant to the provision of the Act, or of the regulation, price schedule, order, requirement or agreement to which such official interpretation relates. An official interpretation shall be applicable only with respect to the particular person to whom, and to the particular factual situation with respect to which, it is rendered, unless publicly announced as an interpretation of general application.

§ 1300.52 *Requirements governing interpretations*—(a) *Requests for interpretations; form and contents.*—Any person desiring an official interpretation of the Emergency Price Control Act of 1942 or any regulation, price schedule, order, requirement or agreement thereunder, shall make a request in writing for such interpretation. Such request shall set forth in full the factual situation out of which the interpretative question arises and shall, so far as is practicable, state the names and post office addresses of the persons involved. If the inquirer has previously requested an interpretation on the same or substantially the same facts, his request shall so indicate and shall name the official or office to whom his previous request was addressed. If the interpretation will affect operations of establishments located in more than one state, the request shall name the states in which

the establishments are located. No interpretation shall be requested or given with respect to any hypothetical situation or in response to any hypothetical question.

(b) *Interpretations to be written; authorized officials.*—Official interpretations shall be given only in writing, signed by one of the following officers of the Office of Price Administration: the Price Administrator, the General Counsel, any Associate or Assistant General Counsel, any Regional Attorney, any Regional Price Attorney, any State Attorney or State Price Attorney, any Chief Attorney or Chief Price Attorney for a District Office, and any Chief Counsel of a Price Legal Branch of the National Office: *Provided,* That interpretations of general application shall be announced only by the Price Administrator, the General Counsel, any Associate or Assistant General Counsel, or any Regional Attorney. The Price Administrator or the General Counsel may also delegate to the Director and General Counsel of the Bituminous Coal Division of the United States Department of the Interior authority to sign or announce official interpretations of designated regulations.

(c) *Revocation or modification of interpretation.*—Any official interpretation whether of general application or otherwise, may be revoked or modified by publicly announced statement by any official authorized to announce such interpretations of general application or by a statement or notice by the Price Administrator or General Counsel published in the *Federal Register.* An official interpretation addressed to a particular person may also be revoked or modified at any time by a state-

ment in writing mailed to such person and signed by the General Counsel or any Associate or Assistant General Counsel. An official interpretation addressed to a particular person by a Regional Attorney, a Regional Price Attorney, a State Attorney, a Chief Attorney for a District Office, or a Chief Price Attorney for a District Office may also be revoked or modified at any time by a statement in writing mailed to such person and signed by the Regional Attorney or by the attorney who issued it or his successor.

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